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10/556,716	02/21/2006	James Kenneth McAlpine	M-0930.02	3308

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EXAMINER

NGUYEN, TUAN N

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/556,716
Filing Date: February 21, 2006
Appellant(s): MCALPINE, JAMES KENNETH

Christopher L. Makay
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/3/2010 appealing from the Office action mailed 11/13/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1-30 and 32.

(4) Status of Amendments After Final

The amendment after final rejection filed 6/3/10 has been entered.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. A) Claims 1-4, 6-14 and 19-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Garguillo; and B) Claims 15-18 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garguillo in view of Downey.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

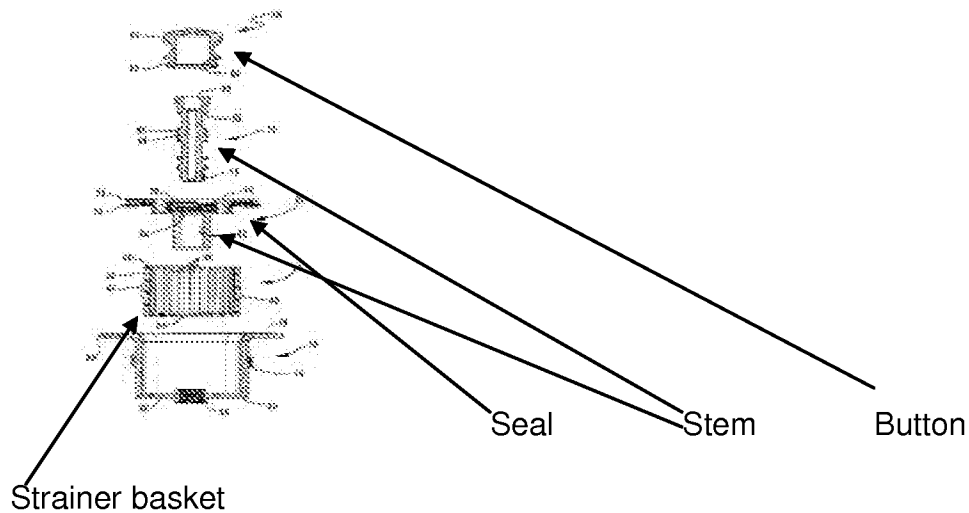
(8) Evidence Relied Upon

US 6,067,669	Peterson et al.	5-2000
US 3,428,295	Downey et al.	2-1969

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: Claims 1, 2, 5, 7-14, 19-21 and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,067,669 (hereinafter referred to as Peterson).

Peterson discloses a plug for cooperating with a waste outlet as claimed:



The functional language of the relative movement between the first portion is taught by members (50,60) and the second portion is taught by member 16 wherein member 60 is separable as a unit as shown in Fig. 2. The movement between member (50,60) relative to member 16 adjust the length of the stem (60,16,50) as claimed.

Claims 15-18 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of US 3,428,295 (hereinafter referred to as Downey).

Although the stem of the Peterson reference does not include a latch means and two biased portion that function in a single direction as claimed, attention is directed to the Downey reference which discloses an analogous plug apparatus which further includes a stem with a latch means and two biased portion that function in a single direction as claimed (see Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the plug device of either Peterson, a stem as, for example, taught by Downey in order to provide operational efficiency (see col. 1, line 25 et seq. of Downey). Doing so would result in

Art Unit: 3751

applying a known technique to a known device ready for improvement to yield predictable results. The application of less than around 5 lbs of force varies the stem length would have been obvious to one skill in the art at the time the invention was made in view of the Downey reference. The modification of the stem in view of Downey would have the first portion move relative to the second portion as claimed.

(10) Response to Argument

With respect to applicant's argument against the Peterson reference, the Peterson's selectively adjustable stem constitutes the sleeve portion of member 50 (the first portion) movably coupled to the fix inner member 16 (the second portion) by grasping the button 60 move member 50 to effectively adjust the length thereof thereby selectively engaging the seal 74 with a portion of a waste outlet in a similar fashion to the instant invention. The requirement of unscrewing the knob 60 first before unscrewing the rigid member 16 does not negate the fact that member 16 (first portion) and the sleeve of member 50 (second portion) are separable from the waste outlet as a unit by first unscrewing member 16 then lift members 50 and 16 out as a unit. although removing t

With respect to applicant's argument against the 35 USC 103 rejection, both the Peterson and Downey devices require the movement of the seal member up and down to effectively open and seal a waste outlet. They are analogous art in the same class and field of endeavor. Downey teaches an alternative mechanism to move the seal member up and down to effectively open and seal the waste outlet. The employment of Downey is merely a use of known technique to improve similar devices in the same

Art Unit: 3751

way. One of ordinary skill in the art would have find an effective way to combine the features since the prior art are within the same field of endeavor. Downey is being utilized to modify the stem structure of the Peterson to move a seal member to effectively allow or block water flow. One skill in the art would find an effective way to combine the teaching of the Downey and Peterson to yield a workable plug having a strainer.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tuan N Nguyen/

Primary Examiner, Art Unit 3751

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/Khoa D. Huynh/
Primary Examiner, Art Unit 3751

/STEPHEN M HEPERLE/

Supervisory Patent Examiner, Art Unit 3753